

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING)	
PHARMACY, INC. PRODUCTS LIABILITY)	1:13-md-02419-FDS
LITIGATION)	
)	
)	
)	

**APPLICATION AND DECLARATION OF MARK P. CHALOS
FOR APPOINTMENT TO PLAINTIFFS' STEERING COMMITTEE**

I respectfully submit the following Application and Declaration for Appointment to the Plaintiffs' Steering Committee as State/Federal Liaison:

I. INTRODUCTION

1. Loeff, Cabraser, Heimann & Bernstein ("LCHB") represents Plaintiffs Jane and Gerald Wray, Tennessee residents, in *Wray v. NECC*, case no. 1:13-cv-10450-FDS¹, which was originally filed on October 31, 2012 in state court in Davidson County, Tennessee, removed to the United States District Court of the Middle District of Tennessee, and subsequently transferred to this Court after the creation of this MDL. We also represent Plaintiffs Raymond McDow and Roseanne Brooks in *McDow v. NECC, et al*, case no. 1:12-cv-12112-FDS, which was filed in this Court (Illinois and New York residents making individual and nationwide class allegations). We represent injured persons or families of deceased persons in these states: Tennessee (7), New York (1), and Illinois (1). As of the date of this submission, we have not yet filed lawsuits except those listed above.

¹ My firm was retained as counsel for the Wrays during the pendency of the motion to centralize these cases and while the *Wray* case was stayed in the district court. Because my firm was not able to make an appearance before centralization in this Court, pursuant to this Court's February 15, 2013 Order, para.6 (doc. no. 4), we are evidently not exempted from the Local Rules requiring pro hac vice admission. Therefore, we are in the process of filing a motion for pro hac vice admission related to this case.

2. I am a partner in the Nashville, Tennessee office of LCHB. I currently serve as Co-Lead MDL Counsel in *In re Whirlpool Front Loading Washer Products Liability Litigation*, MDL 2001 (N.D. Ohio) and on the Plaintiffs Steering Committee, Co-Chair Plaintiffs Expert Committee in *In re Navistar Diesel Engine Product Liability Litigation*, MDL No. 2223 (N.D. Ill). I have also served as a member of the Plaintiffs Steering Committee in *In re Ford Switch Fire Litigation*, Texas state MDL, Travis County, Texas, Cause No. D-1-GN-08-000901. I have represented plaintiffs in many class actions and MDLs, including *In re Diet Drugs*, MDL 1203 (E.D. Pa), *In re Vioxx Litigation*, MDL 1657 (E.D. La), *In re Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, MDL 1718 (E.D Mich.), *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products*, MDL No. 2197 (N.D. Ohio), and *In re Yamaha Rhino Products Liability Litigation*, MDL 2016 (W.D. Ky.).

3. I have tried cases in federal and state courts. I served as lead counsel in consolidated litigation on behalf of a group of 32 elementary school children who were videotaped undressing in their school locker room, which resulted in a \$1.28 million jury verdict. The litigation also resulted in a landmark bodily privacy decision from the Sixth Circuit Court of Appeals, *Brannum v. Overton County School Board*, 516 F.3d 489 (6th Cir. 2008). I have also helped obtain a nearly \$4 million jury verdict on behalf of a young woman who suffered a severe brain injury in a motor vehicle accident and obtained an \$8 million arbitration award for a business client.

4. I received a Juris Doctor from Emory University School of Law and a Bachelor of Arts from Vanderbilt University. I am AV-rated by Martindale Hubbell. I have been named in *The Best Lawyers in America*, "Mid-South Super Lawyer," "*Nashville's Best Lawyers*," and Nashville Business Journal's "Best of the Bar." I am a frequent speaker at legal seminars around

the country on a variety of complex litigation topics. I have made educational presentations regarding the meningitis outbreak at meetings of national and state trial lawyer organizations. I have published a number of articles in peer-reviewed national legal journals, including TRIAL magazine and The Trial Lawyer. I have also co-authored a book, LITIGATING INTERNATIONAL TORTS IN UNITED STATES COURTS, 2012 ed., Thomson Reuters/West (2012).

5. Elizabeth Cabraser is a founding partner of LCHB and will be substantially involved in this MDL. Ms. Cabraser's first MDL was in 1981 and she has since served as lead counsel, as class counsel, and on plaintiffs' executive committees in approximately 50 MDLs and coordinated or consolidated proceedings. These include lead, liaison, or PSC roles in the following cases: *In re Cordis Pacemaker Product Liability Litigation*, MDL No. 850 (S.D. Ohio); *In re Silicone Gel Breast Implants Products Liability Litigation*, MDL No. 926 (N.D. Ala.); *In re the Exxon Valdez*, Case No. A89-095 Civil (Consolidated) (D. Alaska); *In re Copley Pharmaceutical, Inc. "Albuterol" Products Liability Litigation*, MDL No. 1013 (D. Wyo.); *Castano v. American Tobacco*, No. 94-1044 (E.D. La.); *In re Diet Drugs Products Liability Litigation*, MDL No. 1203 (E.D. Pa.); *In re Bridgestone/Firestone Tires Products Liability Litigation*, MDL No. 1371 (S.D. Ind.); *In re: Zonolite Attic Insulation Litigation*, MDL No. 1376 (D. Mass.); *In re Tri-State Crematory Litigation*, MDL No. 1467 (N.D. Ga.); *In re Bextra/Celebrex Products Liability Litigation*, MDL No. 1699 (N.D.Ca.); *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D.La.); *In re Guidant Defibrillators Products Liability Litigation*, MDL No. 1708 (D. Minn.); *In re Neurontin Marketing and Sales Practices Litigation*, No. 04-CV-10739-PBS (D. Mass.); *In Re DeepWater Horizon Oil Spill Litigation*, MDL 2179 (ED LA); *In re Chase "Check Loan" Contract Litigation*, MDL 2032 (N.D. CA); *In re Bank of New York Mellon Corp. Foreign Exchange Transaction Litigation*, MDL 2335 (S.D.N.Y.) and *In*

re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, And Products Liability Litigation, MDL 2151 (C.D. Ca.). Ms. Cabraser's experience includes the negotiation, approval and implementation of class action and non-class aggregate settlements, including those involving limited fund and multiple jurisdiction scenarios, in mass accident, mass injury, financial, and consumer litigations.

6. Ms. Cabraser teaches complex civil litigation, mass torts, and class actions as a visiting professor at Columbia University and Boalt Hall (University of California) Law Schools. She has also lectured and conducted seminars for the Federal Judicial Center, the National Center for State Courts, ALI-ABA, and the Practicing Law Institute. She is a member of the Council of the American Law Institute ("ALI"), and an advisor to the ALI's Project on Aggregate Litigation. She is Editor-in-Chief of California Class Actions Practice and Procedure, LexisNexis (updated annually), Executive Editor of the ABA Section of Litigation's annual Survey of State Class Action Law, and has authored numerous law review and other articles on aggregate litigation and punitive damages. The National Law Journal has repeatedly named Ms. Cabraser one of its "100 Most Influential Lawyers in America," "50 Most Influential Women Lawyers," and "Top Ten Women Litigators;" and the California Daily Journal regularly names her one of the "Top Women Litigators" and "Top 100 Lawyers." She is a 2010 recipient of the ABA Commission on Women in the Profession's highest honor, the "Margaret Brent Women Lawyers of Achievement" award.

7. Wendy Fleishman, an LCHB partner in its New York office, is expected to serve in this MDL in a leadership capacity on the Law and Briefing Committee. Ms. Fleishman has extensive experience in leadership roles in many state and federal MDLs, including Lead Counsel, Joint Coordinated California Litigation, *Amo Lens Solution Litigation* (JCCP 4521,

CA); Co-Liaison, *In re Zimmer Durom Cup Hip Implant Litigation*, MDL No. 2158 (D. N.J.); Plaintiffs' Steering Committee, *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products*, MDL No. 2197 (N.D. Ohio); Liaison, NJ Ortho Evra Patch Product Liability Litigation; Co-Liaison, NJ Reglan Mass Tort Litigation; Executive Committee, *In re ReNu MoistureLoc Product Liability Litigation* MDL No. 1785 (D. S.C.); Discovery Chair, *In re Guidant Products Liability Litigation* MDL No. 1708 (D. Minn.); Co-Chair Science Committee, *In re Baycol MDL Litigation* MDL No. 1431 (D. Minn.); and Pricing Committee, *In re Vioxx MDL Litigation* MDL No. 1657 (E.D.La.).

II. LCHB'S WORK IN THIS LITIGATION

8. In addition to representing clients in several states, LCHB has been active in other aspects of the meningitis litigation. I have organized and led, through Tennessee's state trial lawyer organization, a group of leading Tennessee lawyers handling meningitis cases. I, along with a family member of a severely ill meningitis client, attended as invited guests U.S. Congressional hearings into the deadly outbreak. We met with several Congresspersons to discuss the outbreak and pending legislation to protect public health. I remain in communication with members of Tennessee's Congressional delegation regarding their investigation and legislative efforts. In addition to participating in the Plaintiffs' team investigating the NECC facility, LCHB has also been among the primary firms conducting the ongoing factual investigation into the role of Tennessee clinics in causing or contributing to the outbreak, including by obtaining documents from state government investigators and information from a variety of other sources. LCHB has also identified and engaged leading national experts on some of the key scientific, medical, and regulatory issues in these cases.

III. OTHER LAWYERS SUPPORT THIS APPLICATION

9. Counsel for other victims of the meningitis outbreak have expressed their support and approval of my serving as State/Federal Liaison and for the slate presented herein include:

Kinnard, Clayton & Beveridge (TN)
Randall Kinnard
Daniel Clayton

Leader, Nolan, and Bulso (TN)
George Nolan
William Leader

Law Offices of Rebecca Blair (TN)
Rebecca Blair

Higgins, Himmelberg & Piliponis (TN)
Richard Piliponis
James Higgins

Durham and Dread (TN)
Blair Durham
Benjamin Winters

Lassiter Tidwell Davis Keller & Hogan, PLLC (TN)
John Belcher

Bart Durham Injury Law (TN)
Bart Durham
Anthony Duncan

Gilreath & Associates (TN)
Tim Housholder

IV. CRITERIA FOR APPOINTMENT

A. Willingness and ability to commit to serve

10. LCHB has shown its willingness to serve by taking an early lead in this litigation, including by conducting an early investigation of potential claims, organizing counsel who represent victims, and identifying and retaining key national experts. LCHB represents persons from multiple states who have suffered catastrophic injuries as a result of receiving contaminated

vials of NECC's products. A number of our clients have been diagnosed with fungal meningitis and one has died as a result of the contaminated injection. The firm is committed to this matter and is fully staffed to take on the labor and financial needs that would support my involvement.

B. Ability to work cooperatively with others.

11. As has been the case over the last several months in this litigation and in the many other complex litigations that LCHB has been involved in, we have worked cooperatively with all Plaintiffs' counsel. We have worked with Plaintiffs' lawyers regarding the inspection of the NECC facilities, as well as issues relating to formation of the MDL.

12. Moreover, as set forth above, other lawyers involved in this litigation have expressed their support and approval of this slate of applicants.

C. Access to sufficient resources to advance the litigation in a timely manner.

13. LCHB is able to devote the necessary resources to prosecute this litigation. LCHB is an AV-rated 60-lawyer firm with a support staff of over 200, including investigators, statisticians, accountants and litigation support specialists. LCHB maintains offices in San Francisco, New York, and Nashville that will provide a depth of resources always available, across the country, in support of this litigation. *The American Lawyer* recently called LCHB "one of the nation's premier plaintiff firms." Every year since 2003, *The National Law Journal* has selected LCHB as one of the top plaintiffs law firms in the nation. LCHB is comprised of several key litigation practice groups, including personal injury torts, securities and financial fraud; antitrust; and class action consumer claims. For the past 32 years, Lieff Cabraser has represented plaintiffs exclusively, with consistent success, in an array of substantive areas, serving in leadership roles in class actions, mass torts, and other complex cases, in federal and state courts across the country. The firm's leadership in tort, consumer, investment and human rights litigation has generated verdicts and settlements of over \$62 billion, including Tobacco

litigation for California cities and counties (\$12.5 billion) and the Commonwealth of Massachusetts (\$7.9 billion); reparations to Holocaust victims and their survivors (\$6.2 billion recovered from Nazi collaborators); \$4.2 billion in recoveries for women injured by defective silicone gel breast implants; over \$1.3 billion to homeowners across America to repair and replace defective pipes and exterior siding; \$1.225 billion in the National Gas Antitrust cases; over \$1 billion to victims of failed implants in the *Sulzer Hip and Knee Implants Litigation*, MDL No. 1401 (N.D. Ohio); and over \$700 million to uninsured Californians overcharged for healthcare by major private hospitals.

14. LCHB is committed to using its resources to move this litigation efficiently towards a successful resolution.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 19, 2013



Mark P. Chalos

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
One Nashville Place
150 Fourth Avenue, North, Suite 1650
Nashville, TN 37219-2423
Telephone: (615) 313-9000
Facsimile: (615) 313-9965
mchalos@lchb.com

Counsel for Plaintiffs Jane and Gerald Wray